

**BEFORE THE**  
**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C.

In the Matter of:

Amendment of Section 73.202(b) Table of  
Allotments FM Broadcast Stations  
(Rosendale, New York)

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MM Docket No. 93-17  
RM-8170

To: Chief, Allocations Branch,  
Policy and Rules Division,  
Mass Media Bureau

**RECEIVED**

**MAY 27 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**SUNY RESPONSE TO SHU/RSB SUPPLEMENTAL REPLY COMMENTS**

State University of New York ("SUNY"), by its counsel,<sup>1/</sup> submits this response to the May 12, 1993 Supplemental Reply Comments filed by Sacred Heart University, Inc. ("SHU") and Radio South Burlington, Inc. ("RSB").

**Request to Accept Pleading**

The reply comment deadline in this proceeding was April 27, 1993. Thereafter, on May 12, 1993, SHU/RSB filed their joint Supplemental Reply Comments which purport to address a statement contained in SUNY's timely-filed Reply Comments. The Commission would be justified in simply striking the unauthorized SHU/RSB pleading from the record. However, in the event that the Supplemental Reply

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<sup>1/</sup> Undersigned counsel has just been retained by SUNY to represent it in this matter. SUNY Associate Counsel Lewis E. Rosenthal, Esquire also continues to represent the University.

Comments are considered, SUNY requests that this response also be considered in the interest of fairness and the development of a complete record.

In addition, SUNY has just discovered that another party -- Raymond A. Natole -- filed a counterproposal in this proceeding but failed to serve it on SUNY. SUNY thus seeks dismissal of that counterproposal.

Site Selection Issue

SHU/RSB's pleading seizes upon one statement in SUNY's Reply Comments, that WFNP "intends to build facilities at its existing location," and seeks thereby to undermine SUNY's request for the allocation of Channel 273A at Rosendale and the concurrent modification of the WFNP license. SHU/RSB bring forward all manner of technical, demographic and policy arguments that might relate to the FCC's consideration of a future short-spaced WFNP application, but have no significance to this allocation proceeding.

The fact remains that Channel 273A can be allotted to Rosendale in full compliance with the Commission's requirements concerning mileage separations and community coverage. SUNY has clearly stated that, if the allocation is made as requested, it will file an application for Channel 273A and, if authorized, build the station promptly. See SUNY Showing and Comments, filed April 9, 1993. Thus, the Commission's requirements are fully satisfied by SUNY's proposal.

In order to assist the Commission in determining that this is the case, Leon H. Kobus, Station Director of WFNP, has provided a declaration (attached) that seeks to correct SHU/RSB's mis-impression concerning SUNY's commitment to apply for and construct modified station facilities in the event that the FCC allots Channel 273A to Rosendale and modifies the WFNP authorization. Kobus explains that, in its Reply Comments, SUNY stated its intention to construct modified WFNP facilities at the existing location rather than the allocation point. By that, SUNY meant that its preference would be, if possible, to operate WFNP on Channel 273A at its existing site. Kobus explains that this would be a matter that would be investigated, and, if proposed, justified at the application stage. However, SUNY did not intend at this time to limit itself to that option. It also did not mean, as suggested by SHU/RSB, that it would be unwilling to construct at a fully spaced site if it were ultimately authorized for such a site. SUNY only mentioned its intention at all in order to support its strong preference for Channel 273A over 255A at Rosendale because, among other things, 273A would provide more flexibility with respect to transmitter sites.

#### Natole Comments

On April 12, 1993, Raymond A. Natole apparently filed Comments in this proceeding seeking to add Channel 255A at West Hurley, New York, as a counterproposal to SUNY's proposal to allot Channel 255A as an alternative channel at Rosendale. It may turn out that Channel 255A is not necessary to effectuate SUNY's plans for the use of Channel 273A at Rosendale, and that there is therefore no

impediment to the FCC's issuing a separate notice with respect to West Hurley. However, SUNY believes that the Natole Comments cannot be treated as a valid counterproposal in this proceeding.

The problem is that Natole did not serve his Comments on SUNY as required by the Notice of Proposed Rule Making and Section 1.420(a) of the FCC's rules, and SUNY had no actual notice of his filing prior to the reply comment deadline. Our search of the FCC's records reflects no certificate of service associated with the Natole Comments. The attached affidavits of Lewis E. Rosenthal, Esquire, Kyle E. Magrill and Leon H. Kobus all confirm that they were not served and that they had no knowledge of the pleading until informed recently by undersigned counsel. In these circumstances, FCC precedent supports dismissal of the Natole counterproposal. See, e.g., Bay City, Texas, 8 FCC Rcd. 1552 (Allocations Branch, 1993) at ¶4.

#### Summary and Conclusion

When the FCC has reviewed the issues raised by the filings in this proceeding, it will be inescapably compelled to conclude that SUNY's proposal for the allotment and use of Channel 273A at Rosendale, New York will best serve the public interest. This conclusion is supported by the Reply Comments of WMHT Educational Telecommunications. Natole's counterproposal must be dismissed for violating Section 1.420(a). SHU/RSB's joint counterproposal, at least that version of it filed by the comment deadline, clearly violates Section 1.420(i) and is similarly subject to dismissal. The Bambi Broadcasting, Inc. "Expression of Interest" (that is, counterproposal) for the

use of Channel 273A at Washington, New York, filed on the reply deadline, is late under Section 1.420(d), and therefore cannot be considered. As SUNY's proposal is fully in compliance with FCC requirements, it should be granted.

Respectfully submitted,

**STATE UNIVERSITY OF NEW YORK**

By: Todd D. Gray  
Todd D. Gray

Its Attorney

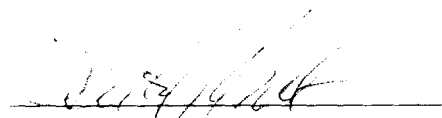
**DOW, LOHNES & ALBERTSON**  
1255 Twenty-third Street, N.W.  
Suite 500  
Washington, D.C. 20037  
(202)857-2500

May 27, 1993

I am Leon H. Kobus, Station Director of Station WFNP (FM), Rosendale, New York, which is licensed to the State University of New York. I am familiar with SUNY's efforts to amend the FM table of Allotments to allot Channel 273A to Rosendale, New York, and to modify the license of Station WFNP, Rosendale, to operate on Channel

than the allocation point. By that, we meant that our preference would be, if possible, to operate WFPN on Channel 273A at our existing site. This would be a matter that would be investigated and, if proposed, justified at the application stage. We did not intend, at this time to limit ourselves to that option. We also did not mean, as suggested by SHU/RSB, that we would be unwilling to construct at a fully spaced site if we were ultimately authorized for such a site. The reason we mentioned our intention at all at this time was in support of our strong preference for Channel 273A over 255A, because, among other things, 273A would provide more flexibility with respect to transmitter sites.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 21, 1993.

A handwritten signature in dark ink, appearing to read 'Leon H. Kobus', is written over a horizontal line.

Leon H. Kobus


DECLARATION OF LEWIS E. ROSENTHAL

I am Lewis E. Rosenthal, Esquire, Associate Counsel of the State University of New York (SUNY). I have represented SUNY-New Paltz in connection with its efforts to amend the FM Table of Allotments to allot Channel 273A to Rosendale, New York, and to modify the license of Station WFNP, Rosendale, to specify operation on Channel 273A. My name was listed in the FCC's Notice of Proposed Rule Making in MM Docket 93-17, RM-8170, for the purpose of receiving service of comments and counterproposals in the proceeding.

I was not served with the "Comments of Raymond A. Natole," which I am told was filed with the FCC on April 12, 1992 and I have not seen a copy of that document. I only became aware of the name Raymond A. Natole when I noticed him listed on the service papers of the reply comments of other parties to this proceeding, who presumably found a copy of his filing in the FCC's docket. I only found out on May 21, 1993 that he had filed a counterproposal in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 1993.



\_\_\_\_\_  
Lewis E. Rosenthal, Esq.



Declaration of Kyle E. Magrill

I am Kyle E. Magrill of Magrill & Associates, Broadcast Technical Consultants. I have provided engineering services to SUNY-New Paltz in connection with its efforts to amend the FM Table of Allotments to allot Channel 273A to Rosendale, New York, and to modify the license of station WFNP, Rosendale, to specify operation on Channel 273A. My name was listed in the FCC's Notice of Proposed Rule Making in MM Docket 93-17, Rm-8170, for the purpose of receiving service of comments and counterproposals in the proceeding.

I was not served with the "Comments of Raymond A. Natole," which I am told was filed with the FCC on April 12, 1993, and I have not seen a copy of the document. I only found out on May 21, 1993, that he had filed a counterproposal in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 1993.

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Kyle E. Magrill

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "SUNY Response to SHU/RSB Supplemental Reply Comments was served this 27th day of May, 1993, by first class United States mail, postage prepaid, upon the following:

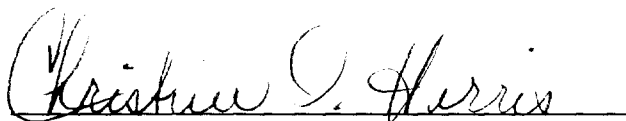
Leslie K. Shapiro\*  
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\* Via Hand Delivery.